

December 8, 2002

Via Electronic Posting

Federal Communications Commission
Office of the Secretary
Marlene H. Dortch
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 200554

RE: **CG Docket 02-278**
Telephone Consumer Protection Act of 1991 (the “Act”)

Dear Commission:

We appreciate this opportunity to comment on the proposal to institute a national do-not-call list under the September 18, 2002 Notice of Proposed Rulemaking and Memorandum Opinion and Order (the “Proposal”). We comment as American consumers who have received hundreds of telemarketing calls over the last several years.¹ In addition, because we moved our residence in July, 2002, and changed our phone service, we have an interesting story about telemarketing to relate, and we think that our experience will assist the Commission in resolving some of the issues presented by the Proposal. As a result, we want to suggest ways that the Commission can modify the Proposal in order to more easily accomplish its objectives and to minimize the burdens on consumers, telephone carriers, and telemarketers.

Our telemarketing story: Our telephone service, for several years, has included two telephone lines. On the first line we have two telephone numbers, which is called “multi-ring service.” The purpose of this function is so that we can identify calls that are personal calls from calls that are business calls for a home-based business. This assists us when we answer the telephone. For sake of simplicity in this letter, we will refer to these two numbers as the “Personal Number” and the “Business Number.” We use the second line (which is a third telephone number) for incoming fax transmissions, computer access, and outgoing telephone calls when the other line is busy. Because the second line is set up to take incoming fax transmissions automatically, we

¹ Jeffrey Wood has submitted a separate comment letter on the Proposal as an attorney for Household Automotive Finance Corporation. Please note that this letter does not reflect the views of Household Automotive Finance Corporation, or its affiliates or subsidiaries, and solely represents the views of Jeffrey Wood and Claudia Lamm Wood from their perspective as American consumers.

believe any telemarketers who contact us on that line end up disconnecting when the fax machine signals.²

Until we moved recently, we had always received many, many telemarketing calls on the Personal Number and on the Business Number. At our old residence, we often received two calls from the same telemarketer within minutes of each other, one on the Personal Number and then one on the Business Number, or vice versa. Interestingly, the Personal Number and the Business Number are listed under two separate names. The Personal Number is listed to Jeffrey Wood, and the Business Number is listed to Claudia Lamm Wood. On more than one occasion when Jeffrey answers the Business Number, a telemarketer will startle him with the nonsensical question "Is this Mr. LammWood?" even though his name is Mr. Wood.³ We believe telemarketers did not think these two numbers were at the same residence because the last names were different.

At our previous residence, however, the Business Number was not listed in the public telephone directory. (This required an additional fee to the telephone carrier and at that time we decided not to pay the additional fee.) Nevertheless, we usually received telemarketing calls on both the Personal Number and the Business Number, so we concluded that the telephone carrier was providing the Business Number to telemarketers even though they refused to publish it in the public telephone directory without an additional charge. (This is still their policy, and at our new residence, we have decided to pay the additional fee for a separate telephone listing.)

We moved our residence in July, 2002, and we decided to replicate the same telephone service we had at our previous residence (except for the change in listing the Business Number in the public telephone directory).⁴ When placing the service with our telephone carrier, we inquired if there was a way to limit telemarketing calls or to stop the telephone carrier from providing our telephone number to telemarketers.⁵ We learned that the telephone carrier would, indeed, not

² We may have received some unsolicited advertisements by fax, although the incidence is insignificant and unsolicited fax advertisements is not a topic we think the Commission needs to spend much time addressing.

³ We suspect that telephone carriers intentionally provide the multiple-ring numbers to telemarketers in order to increase their revenue from the sale of telephone numbers to telemarketers, even though telemarketers would obviously rather not receive the multiple-ring numbers and waste their time and consumers' time in receiving what is clearly a duplicate telemarketing call on the same telephone line. We recommend that the Commission look into this practice and institute rules to prohibit telephone carriers from providing multiple-ring telephone numbers to telemarketers.

⁴ It is worth noting that the telephone carrier required us to change telephone numbers, even though we moved less than 1.5 miles from our old residence, because we moved from one suburb of Chicago to another suburb of Chicago. This permitted the telephone carrier to charge installation and connection fees and has obviously aggravated the inconvenience of moving. At another time, we suggest that the Commission work with telephone carriers to develop ways to permit telephone customers to "port" telephone numbers from one community to another. This will greatly lessen one of the major inconveniences of moving in America. Further, it will permit consumers to continue their telemarketing preferences without change or effort when they move.

⁵ We knew that the telephone carrier affirmatively provided telephone numbers to telemarketers (along with the names of the listing and perhaps other information about the user), because our Business Number was not published in the public telephone directory and could not be available to telemarketers unless the telephone carrier had

provide our telephone number to telemarketers at our request. We gladly requested the telephone carrier not to provide our telephone number to telemarketers.

Our experience as a result of this request was eye-opening. We are writing this letter to the Commission specifically to relate this experience to you, because we believe that it greatly informs the Commission's task in developing and consummating the Proposal. Specifically, when we requested the telephone carrier not to provide our telephone number to telemarketers, we did not specify that this request applied to both the Personal Number and the Business Number. The telephone carrier clearly applied this request only to the Personal Number, however. As a result of our request to the telephone carrier, we have received virtually no telemarketing calls on the Personal Number, but we have received many such calls on the Business Number. Within days after our move, we began receiving telemarketing calls on the Business Number.

Our Proposal: Therefore, we strongly believe that the most efficient and least burdensome way to address consumer preferences with respect to telemarketing is to use the telephone carriers' current practice of not providing telephone numbers to telemarketers, with some amplifications.

Specifically, the way to minimize the expense and effort of managing a centralized national do-not call list is simple. Telephone carriers should be required to flag telephone numbers upon a consumer request that the telephone number not be provided to telemarketers. When the telephone carriers provide telephone numbers to telemarketers, they would be required to not provide the "flagged" telephone numbers. Telemarketers would be required to use the listing of telephone numbers provided by telephone carriers (not the public telephone directory), which appears to be their current practice, and those lists of telephone numbers would not include any numbers of consumers who had requested that the telephone carriers not provide their numbers to telemarketers.

This is quite similar to a process that is apparently already in place. As the Commission notes in paragraphs 18-19 of the Proposal, the Commission recently released an Order under Section 222 of the Communications Act of 1934, which, among other things, requires some limitations on the extent to which telephone carriers are permitted to use "customer proprietary network information" (CPNI). It is clear to us that Section 222 and Section 227 are inextricably linked. Specifically, Section 222 can be the means by which the Commission can provide consumer protection to customers of telephone carriers under both the Communications Act of 1934 and the Telephone Consumer Protection Act.

We do not believe that the First Amendment restricts the Commission's ability to limit the extent to which telephone carriers can transfer information about its customers to third parties. The Gramm-Leach-Bliley Act, applicable to financial institutions, similarly restricts the transfer of

provided it. We suspect that most American consumers are not aware of this practice, and that most Americans probably believe that telemarketing results from numbers placed in the public telephone directory. We believe that telephone carriers should be required to publicize this practice, and that they should also be required to publicize their practice to not provide telephone numbers to telemarketers upon a consumer's request.

information. Congress clearly views the transfer of consumer information as a topic that is worthy of Congressional legislation and that does not interfere with First Amendment rights. There might be a concern if legislation prevented the transfer of information about public figures, including government officials, but it does not appear that preventing the transfer of information about private citizens, at the request of the private citizen, does not conflict with the Constitution or American law.

At the same time, companies that engage in telemarketing would be required to continue their current practice of maintaining a “company-specific” do-not-call list for their existing customers. Otherwise, companies would be permitted to contact any telephone numbers provided by the telephone carrier. Companies would also be permitted to contact any telephone numbers of their existing customers within their database, provided that such customers had not requested do-not-call status directly with the company.

In this way, consumers who did not want to receive telemarketing calls would tell their telephone carrier not to provide their telephone information to telemarketers, and the telephone carriers would be required to comply with this request. Consumers would have the choice, with respect to companies they patronize, to determine whether those companies could contact them by telephone for marketing purposes (this process is required by existing rules). In addition, consumers would be permitted to inform companies they patronize not to provide their telephone information to third parties (this process is currently already required for financial institutions under the federal Gramm-Leach-Bliley Act). Consumers who utilized these three options would never receive unwanted telephone calls.

Advantages to our Proposal: Our suggestion is superior to the current practices and is much better than some kind of do-not-call list managed by the federal government. Here are some advantages for you to consider:

1. The do-not-call preference for the consumer would be registered in the database where it really matters: the database of telephone numbers that are provided to telemarketers.
2. This suggestion would utilize existing databases. No new database would be necessary.
3. No separate, new, centralized, national, government-run database would be necessary. This will save the taxpayers millions of dollars and would avoid the certain problems connected with the government running a database of such proportions.
4. Consumers who have unlisted phone numbers (and who wish to limit telemarketing calls) would not be required to include their numbers on a centralized, widely available database, which could easily compromise their privacy.
5. This suggestion will minimize the risk of error. Specifically, because no one will be inputting a telephone number into a separate database, there is no risk of error. The number on the telephone carrier’s database is always the “correct” number because it’s the number that was issued by the telephone carrier.

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6. Consumers would not be required to contact a separate database manager to record their do-not-call request.
 7. Consumers could be informed, at the time they order telephone service, about their option to flag their telephone number so that it would not be provided to telemarketers. This is the logical time for consumers to make this decision.
 8. Consumers would never receive an unwanted telephone call, provided they exercised their choices in the manner described above.
 9. Consumers who did not want to receive telemarketing calls would not receive any “dead air” calls as a result of telemarketers who use automatic dialing machines.
 10. Consumers would not have to endure telephone calls from telemarketers in order to discover whom to inform to include their names on a do-not-call list run by the telemarketers.
 11. Consumers would not have to endure hangups by telemarketers who think they’re being tricky by hanging up so quickly the consumer doesn’t have an opportunity to request placement on the do-not-call list.
 12. Consumers would not have to register their do-not-call preferences by contacting a separate database manager when their telephone number is changed. The telephone carrier would take care of their request at the time the change is processed or the new service is ordered.
 13. In addition, there would be no need for state-managed do-not-call lists. Only one recorded do-not-call preference is necessary: at the point where numbers are generated for telemarketers.
 14. Because state-managed do-not-call lists could be eliminated, state governments and companies would save millions of dollars in expenses connected with managing and obtaining state lists.
 15. There would be national uniformity in the management of the do-not-call process. Consumers who moved from one state to another would maintain the same telemarketing rights they had in their previous state. Currently consumers in different states have different telemarketing choices.
 16. There is little inconvenience to consumers. Consumers would not be required to notify multiple companies to put their name on the company-specific do-not-call list unless they already have a business relationship with the company. “Cold telemarketing calls” would be eliminated for consumers who do not want to receive them.
 17. The inconvenience to the telephone carriers is minimal. While the carriers might complain about additional procedures, it appears that they already have the computer system set up to

accommodate this type of request. The Commission, not the carriers, would publicize the consumer's option to utilize this do-not-call service. Carriers could easily establish a toll-free telephone line, connected to a voice-response system, for consumer requests to be systematically processed without any manual procedures.

18. Although telephone carriers might complain about a loss of revenue, because they will (obviously) sell fewer telephone numbers to telemarketers, there are two major compensating factors. First, the list of remaining consumers (who have not opted out from having their telephone number provided to telemarketers) will be a much more valuable list for telemarketers, and it is likely that the revenue connected with this more valuable list will equal or exceed the prior revenue for a list that was not as valuable. Second, it is unfair for the telephone carriers to profit from selling names and telephone numbers of unsuspecting consumers, and this unseemly activity should be stopped, even if it means a loss of revenue to the carriers.⁶
19. This proposal keeps pace with modern technology. It aligns the process with technological developments, because the process is centered at the place where telephone service occurs: at the telephone carriers who provide telephone service.
20. It appears very few telemarketers utilize the public telephone directory to place telemarketing calls. Certainly the large telemarketers use lists from telephone carriers in order to minimize the time and expense in conducting their business. It is labor intensive to dial telephone numbers from a directory, and we believe most telemarketers can take advantage of technology that permits telephone numbers to be dialed automatically.
21. The costs of the process would be paid by telemarketers within the price of purchasing the list of telephone numbers from the telephone carriers. This places the cost of implementation squarely at the place where the profits from telemarketing accrue.
22. While companies would continue to manage their internal do-not-call lists, this is their current obligation. Companies would, in addition, be required to not provide telephone information to third parties for marketing purposes for any of their customers who are maintained on their internal do-not-call lists.
23. Telemarketers and companies would have much more valuable information with which to conduct telemarketing campaigns. Their databases would be more targeted to people who were interested in receiving offers by telephone.

⁶ Of course, the telephone carriers will argue that the telephone number is the property of the carrier, not the consumer. Congress has already determined, however, that consumers who do not want to receive telemarketing calls should be spared that aggravation, in the manner in which the Commission determines. While the telephone number itself may be the property of the telephone carrier, the consumer owns the telephone and the time spent answering it.

24. Consumer choice would be maximized. Consumers who wish to receive telemarketing calls from some companies, or who wish to limit telemarketing calls from only companies, would have that option.

This proposal is highly superior to the existing system, which unfairly subjects consumers to telephone calls until every telemarketer gets the "do not call" message from the consumer. This proposal is also highly superior to the Commission's Proposal, which would be extremely expensive and cumbersome, and would limit consumer choices.

We urge the Commission to consider our proposal seriously. We urge the Commission to reject any criticism of this proposal from telephone carriers, because the inconvenience to telephone carriers is minimal, and because Congress has already made the policy decision for the entire nation that consumers are entitled to limit telemarketing phone calls in the manner that the Commission deems best.

Thank you again for this opportunity to comment on the Proposal.

Sincerely,

Jeffrey B. Wood
Claudia Lamm Wood